

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
FEBUARY 3, 2009**

**CALL TO
ORDER**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Mark Hash, Gina Klempel, Craig Wagner and Scott Hollinger. Tony Sagami was absent. Dianna Broadie, George Smith and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were 9 people in the audience.

**APPROVAL OF
MINUTES**

Klempel motioned and Wagner seconded to approve the November 5, 2008 minutes. The motion passed unanimously.

**PUBLIC
COMMENT**
*(not related to
agenda items)*

None.

**ELECTION OF
BOARD
OFFICERS**

Hash motioned and Klempel seconded the motion to table the election of board officers until the April 7, 2009 meeting. The motion passed unanimously.

**ROY CURRY
FAMILY TRUST
(FZV 08-07)**

A request by Roy L Curry Family Trust for a Zoning Variance to property within the West Valley Zoning District. The applicant is requesting a variance to Section 3.34.050 (3)(D) of the Flathead County Zoning Regulations which requires a portion of each lot to be located within 1500 feet of a road maintained by the County and have access to and use of said road. The applicant is requesting a relaxed road length standard to the 10-acre density provisions of the West Valley Zoning District to allow the use of a 2065 foot paved road to access a 19.8+ acre parcel. The property is located at 788 West Valley Drive.

STAFF REPORT

Dianna Broadie reviewed Staff Report FZV 08-07 for the Board.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

Rick Breckenridge, 1405 Hwy 2 W, surveyor on the project, said they had preliminary plat approval in 2005. He went over the history of the application and why they wanted the lots configured differently.

**BOARD
QUESTIONS**

Klempel asked which road was paved.

Breckenridge said the lower road was paved. The soil criterion was met as well.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

None.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

None.

**MAIN MOTION
TO ADOPT
F.O.F. AND
RECOMMEND
APPROVAL**

Wagner made a motion seconded by Klempel to adopt staff report FZV 08-07 as findings-of-fact and recommend approval.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.
AND
RECOMMEND
APPROVAL**

On a roll call vote the motion passed unanimously.

**GARY
KRUEGER (FCU
08-19)**

A request by Gary Krueger, for a Conditional Use Permit to operate an open-cut sand and gravel mine on a 60-acre site within the West Valley Zoning District. The property is located north of Clark Road west of Fox Farm Road and is on the same tract of land previously permitted (FCU 06-02) for an open-cut sand and gravel mine currently in operation.

STAFF REPORT

George Smith reviewed FCU 08-19 for the board.

**BOARD
QUESTIONS**

Klempel asked the original time limit for the first Conditional Use Permit (*CUP*) for the applicant.

Smith differed to the applicant.

The applicant was unsure of the time frame.

Harris said a twenty year time limit was given for the first CUP. The twenty year time limit had been a consistent practice of the board.

Smith clarified that this application was a standalone application and not related to the previous CUP.

Hollinger and Smith discussed and clarified points on the conditions.

**APPLICANT
PRESENTATION**

Gary Krueger, 805 Church Dr. Kalispell operates a small gravel pit currently in the area of this application. He applied for this permit because he was looking for a specific material to sell. His current pit ran out of the material, but according to exploration, other parts of his property did show evidence of the material. He planned to put a wash plant in his current gravel site and that request was now in process at the Department of Environmental Quality (*DEQ*). He explained why his current area for his gravel pit was too small. He explained how he tried to keep his current pit mostly camouflaged. Most of the activity will occur at his current site. He agreed mostly with the staff report. He hired an independent source to do an environmental assessment and was not able to submit it on time. He wanted the board to take a look at the assessment at this time and acknowledge they did receive an assessment.

**BOARD
QUESTIONS**

Klempel asked who did the environmental assessment.

Krueger said Mike Fraser who was his consultant. He had requests on the conditions and gave the board a handout on the changes he wanted to make. He then elaborated on the changes.

Klempel asked if the applicant had a wash plant presently.

Krueger said it was in the process of being approved at the DEQ. It was allowed under the CUP on the other gravel pit. This application covered just mining. Most of the operations will stay at the first mine.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Clara LaChappelle, 3580 Farm to Market Road, asked the board to deny the request for the gravel pit. She asked when the board members received copies of letters from the public to review.

Harris said if the office received them at least seven days ahead of the meetings, then they were sent to the board in their information packets a week before the meeting. If the letter was submitted to the office after that time, then they were copied and placed before the board members to read before the meeting.

LaChappelle said that the board members had no time to read the letters then.

Harris said it was a matter of doing what staff could do before the public hearing.

LaChappelle said the public had been before the board several times and voiced their views on gravel pits and their opinions had fallen on deaf ears. She compiled a notebook the last time she was before the board on the condition of Church Drive and felt the road could not handle the increased traffic of heavy trucks. She thought as far as Saturday hours were concerned, the people of West Valley needed a break from all the truck traffic to be able to travel on the local roads during the weekend without the worry of large trucks. She said there was no system in effect to enforce the conditions if the applicant was in violation. Now was the time to set into motion a system to regulate who was in compliance and who was not as far as gravel pits and their operation was concerned. She was concerned that the board was rubber stamping the conditional use permits as far as gravel pits and their operation and also concerned about the lack of oversight of the operations. She asked for a denial of the CUP.

Harold Tutvedt, lives on the west side of Krueger's current gravel pit, and said he heard more agricultural noise than mining noise. He said when the mining was done, all it did was lower the elevation, so the land could be put back into farming. He did not think there will be the amount of trucks on the roads people were afraid of. He was in favor of approval of the application.

**APPLICANT
REBUTTAL**

Krueger said he did take care of his pits and had great pride in the way they mine. He named the places he donated gravel to and the materials he gave to improve local roads from his pit. He handed out pictures of the current gravel pit and described all the ways he had tried to make the operation as esthetically pleasing as possible. He explained why he asked for the conditions he asked for.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

Klempel wanted to disclose she owned a gravel pit, but did not have any interest economically in the current application so she would vote on this application.

Hash asked if Smith had been keeping notes on each individual change the applicant wanted to make on the conditions, or should the board address the issues the applicant wanted to change.

Smith recommended the board address the changes then staff would comment on the changes.

Hash said there were some concerns with Church Drive. Initially Smith had concerns about Church Drive and Hash wondered what changed Smith's mind.

Smith said he did not have the expertise to refute what the Road and Bridge Department had stated, and they had reported the road was adequate.

Harris said the road report was originally provided as part of the Tutvedt gravel pit reconsideration. Staff then sent the report to the Road Department for review and asked them to core the road to make sure the physical representation of the report was accurate. What staff received was emails which stated the Road Department worked with Tutvedt and had no issues with the road.

Hash said the other issue was the hours of operation. He wanted to know staff's position on the requested change of hours to include Saturdays.

Harris said staff did not support Saturday operations. He felt there would be an impact on the neighborhood. As the area

became more populated, the issue of Saturday hours would become more problematic.

Hash asked about the issue of lighting only allowed on the machinery.

Smith had no problem with freestanding lighting as long as the lights were controlled. He believed the applicant looked at the safety issue with machinery mounted lighting and was concerned.

Hash asked about the size of the pits.

Smith said there had been debate over the size of the pit. Staff counted the size of active mining, not the surrounding area used for piles of material in the size of the pit.

Harris said this application was a standalone application, but did border the initial gravel pit which made the area the applicant was allowed to mine 40 acres all together in the immediate area. The applicant had only mined less than six acres in his initial mine at this time. The overall impact needed to be considered.

Hash asked about access on different roads.

Smith said he understood that the applicant had an access permit and that permit should stand for both pits. Staff wanted a letter from the Road Department which stated they considered the access that had been granted, adequate for the increased use.

Hash asked about the use of the trails on the applicant's property for farm related activities. He wondered if that meant the applicant's farm or other farms in the area.

Smith replied it was for the applicant's farm.

Hash brought up the issue of enforcement of conditions on properties which had been approved. He asked what staff did to enforce adherence to the conditions.

Harris said he could speak from the county attorney's perspective. The issues of enforcement were not from the applicant's pit but from the Tutvedt's pit. Since the board had

granted the new CUP, no one had appealed or protested the decision, and the thirty day grace time went through. The Tutvedt's attorney was still talking with the county attorney about conditions which the board placed on the new application. Staff was waiting for guidance from the county attorney on that issue.

Hash asked if a staff member drove by properties which have had complaints.

Smith said staff does respond to complaints as well as doing a drive by on occasion. Staff had responded to every complaint on the Krueger permit; at least to the extent of going out and looking at the property.

Klempel asked if the operator was notified as well.

Smith said they were contacted through the attorneys. All staff could do was observe and report to the county attorney.

Hash commented on the apparent friction in West Valley and hoped if everyone knew what the conditions were and that someone watched over the operation, then some of the friction could be smoothed.

Smith said that was true, unfortunately, many of the cases had been kicked into litigation and when that happened, staff was only able to observe and report.

Hollinger said that many times, in his experience, complaints were ungrounded. He also commented on staff's quickness to respond to complaints. He spoke on a comment about rubber stamping and complimented the staff on their thoroughness of their work with the applicants and their staff reports which in turn made the board's work easier. He said, in his opinion, more gravel pits do not equal more traffic, they equal less traffic.

The board and staff discussed the issue of the applicant being able to get gravel for various non profit issues such as gravel for the church parking lot, etc. This issue led to a lengthy discussion between staff, the board and applicant on operation before or after hours which include routine maintenance.

**MAIN MOTION
TO ADOPT
F.O.F.**

Hash made a motion seconded by Wagner to adopt staff report FCU 08-19 as findings-of-fact and make the following changes;

F.O.F. #9. The Orchard Pit Environmental Assessment has been reviewed by the board and by this reference is incorporated into the Report and Findings.

Recommendation #4. Hours of operation shall be 7:00 AM to 7:00 PM, Monday through Friday. ~~No operation, including on site or transport of materials shall occur on Saturday or Sunday.~~ Saturday operations shall be limited to 8:00 AM to 5:00 PM with no hauling after 12:00 noon Saturday and no operations on Sunday. Operations are considered to start when equipment is turned on and shall be turned off at the end of the day. Equipment may be transferred between the site and maintenance facilities Monday Through Saturday only, until 9:00 PM. Fueling and equipment repair and maintenance shall not be considered 'operations'.

#9. Any light used for the operation ~~shall~~ may be equipment-mounted ~~only~~ or free-standing and all light shall be directed so as to be contained within the site.

~~16. Engineering data verifying the suitability of Church Drive for heavy truck haulage in the anticipated peak volume of 100 trucks has been provided to the Flathead County Road and Bridge Department. If the road is deemed insufficient for the use, the applicant shall improve Church Drive to the standards specified by FCR&B.~~

#24. Use of mined materials ~~stockpiled on site~~ may be used for farm related activities on applicant's property.

**BOARD
DISCUSSION**

The board had a small discussion on whether or not maintenance included starting the machinery and could that be done during operating hours.

Krueger said he could remove the equipment to a shop to work on.

Klempel asked if Krueger had a shop.

Krueger said he had a shop off site about a quarter of a mile away.

The board, applicant and staff discussed issues of noise with operation and what defined operation.

Hollinger asked LaChapelle if she had any other comments she wanted to make before the board voted.

LaChapelle recounted an incident in which she was blinded by a blast of light as she came over a hill on Farm to Market Road and almost ran off the road because she could not see and thought a large truck was on her side of the road. The applicant was performing maintenance on his vehicles in the gravel pit. When LaChappelle asked him about why the lights were on, he replied it was not his understanding maintenance was not permitted under the CUP after hours. She was in agreement with the thought that the hours stated should be the hours in which he could operate or do maintenance on the equipment.

**ROLL CALL
TO
RECOMMEND
APPROVAL OF
FCU 08-19 AS
AMMEDED**

On a roll call vote the motion passed unanimously.

**COMMITTEE
REPORTS**

None.

OLD BUSINESS

Staff had not heard anything from the applicant on the Shagai Retreat Center. It was still on hold.

Jeff Harris updated the board on the Stoddard Yoga Children's Summer Camp (FCU 08-15). They were in violation of several conditions of their CUP. One was the Tuesday/Thursday classes and seasonal classes; the second was a retail store on the site. One of the conditions allowed the Stoddards to come back to ask for additional authorization for classes outside of the Summer Camp hours. There was a meeting between the Stoddards and staff and staff felt that the Stoddards were trying to meet their conditions to the best of their abilities at the time. At that meeting they also discussed the store and other issues in which they were in non compliance with their permit. The store was not allowed under the permit and must go. It was a retail use in an agricultural zoning area. Staff presented three recommendations. The applicants can stop the

Tuesday/Thursday classes and the store goes, they can apply for a new CUP or an expansion of the CUP they already have and the store still goes, or they can come in on a case by case basis and ask the board for anything extra they wish to do. What sparked this investigation were several complaints from the neighbors.

Hash asked if Harris was simply reporting what he had found to the board.

Harris said yes. What staff wanted was some direction and commitment from the Stoddards on record that they were willing to do certain things otherwise staff would be forced to take the next step which they would rather not do.

Hash summarized what Harris reported to clarify for himself.

Harris said that Stoddards can come in and be heard for another use under the second condition on their CUP and the adjoining neighbors do not necessarily need to be notified.

The board and Harris discussed how the neighbors would feel about not having a voice in what was allowed uses and how they would know what approved uses are.

Harris corrected for the board the typos in the report in front of them.

Wagner said it was his understanding the property was for sale.

Harris said he had been to the front gate of the property several times and there was a sign on it, but the Stoddards were present so the question should be asked of them.

Craig Stoddard said there was no sign on the property.

Harris said perhaps it was on a different property.

Hollinger asked the Stoddards if they would like to contribute their views, plans or ask any questions.

Dana Stoddard said she hoped everyone knew they thought they were in compliance with the permit on the Tuesday/Thursday classes. They did not know until the meeting with Harris that the eight car trip needed to not occur at the same time. They do not want to stop the classes or expand them. On the subject of

workshops, they would come to the board on a case by case basis. They asked that the Tuesday/Thursday classes be able to continue.

Craig Stoddard added they had listed the property for sale because they want to see what their options were. If they were turned down with the board then they may be able to continue the classes elsewhere.

Hollinger said the next step was an amendment to condition #2 of the existing CUP.

Dana Stoddard said that was their preference. The store had been closed.

Harris said what staff will do was schedule a public hearing for an expansion of the CUP to add the Tuesday/Thursday classes.

NEW BUSINESS None.

ADJOURNMENT The meeting was adjourned at approximately 8:30 pm. on a motion by Wagner and seconded by Klempel. The next meeting will be held at 6:00 p.m. on April 7, 2009.

Scott Hollinger, President

Donna Valade, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 5/5/09